



Federal Communications Commission
Washington, D.C. 20554

July 27, 2018

WXOW-WQOW License, LLC
P.O. Box 909
Quincy, IL 62306

Re: Request for Modification and
Waiver of Phase Assignment
WQOW(TV), Eau Claire, WI
Facility ID No. 64550
LMS File No. 0000055152

Dear Licensee,

On June 12, 2018, WXOW-WQOW License, LLC (Quincy), the licensee of Station WQOW(TV), Eau Claire, Wisconsin, (WQOW or Station), filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 2, and instead transition on or before September 7, 2018, with a testing period to commence immediately prior.¹ For the reasons below, we grant Quincy's request for waiver and modify WQOW's phase assignment to permit it to commence testing and transition to its post-auction channel on or before September 7, 2018, subject to completion of applicable consumer education requirements and any required notice to multichannel video programming distributors (MVPDs),² compliance with FCC Form 2100, Schedule 387 reporting requirements (Schedule 387),³ and any additional commitments made in its waiver request.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.⁴ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000055152, WQOW Early Transition Waiver Request Narrative, Technical Statement, and Vendor Letters (WQOW Waiver Request).

² Repacked stations are required to conduct consumer outreach efforts including providing on-air viewer notifications in the form of public service announcements as well as on-screen crawls at least thirty (30) days prior to transitioning to their post-auction channels. See 47 CFR § 73.3700(c). To the extent applicable, repack stations are also required to provide MVPDs with notice ninety (90) days prior to transitioning. See 47 CFR 73.3700(d).

³ See *Incentive Auction Task Force and Media Bureau Release Transition Progress Report and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund & Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, 32 FCC Rcd 256 (MB 2017) (subsequent history omitted). In addition to filing on a quarterly basis, repacked stations are required to file an FCC Form 2100, Schedule 387 (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. *Id.* at 258-59, para. 8.

⁴ See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

overall policy on an individual basis.⁵ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.⁶ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁷ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁸

WQOW is currently licensed to operate on channel 15. It was reassigned to channel 25 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a testing period start date of December 1, 2018, and phase completion date of April 12, 2019. WQOW is located in the La Crosse-Eau Claire, Wisconsin, Designated Market Area (La Crosse-Eau Claire DMA). A total of six stations, including WQOW, were repacked in the La Crosse-Eau Claire DMA, with three stations currently assigned to Phase 2, two stations to Phase 9, and one station that completed its transition. Quincy requests permission to begin testing and commence operation on WQOW's post-auction channel on or before September 7, 2018.

Contemporaneously with the instant waiver request, Wisconsin Educational Communications Board (WECEB), licensee of WHLA-TV, La Crosse, Wisconsin (WHLA-TV), has also sought authority to transition to its post-auction channel on September 7, 2018.⁹ According to Quincy, both requests are "inextricably linked" because WQOW currently operates on WHLA-TV's post auction channel – channel 15.¹⁰ Therefore, in order to avoid interference WQOW must transition to its post-auction channel at the same time or before WHLA-TV completes its post-auction transition.¹¹ Both Quincy and WECEB are seeking a phase change for a number of reasons, including: (1) to prevent an extended period of service loss to viewers of WHLA-TV's caused by WHLA-TV's need to operate at reduced power on an interim facility during construction of its post-auction facility;¹² (2) reduce the likelihood that WQOW viewers may experience service loss due to potential weather related construction delays that could be caused by

⁵ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

⁶ See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

⁷ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁸ *Id.*

⁹ LMS File No. 0000055116 (WHLA-TV Waiver Request).

¹⁰ WQOW Waiver Request at 1.

¹¹ See *id.* at 2.

¹² *Id.* at 3-4. See WHLA-TV Waiver Request, WHLA Request for Phase Change at 2 (reducing the amount of time by 85 days in which more than 92,000 viewers would lose public television service, most of which have no other public television service options available). In its request WECEB includes a map showing the coverage area that would not have any access to a public television station. Compare WHLA-TV Waiver Request, WHLA_TV_06818 with WHLA-TV Waiver Request, WHLA-TV.

harsh winter conditions that exist in Wisconsin;¹³ and (3) facilitate better utilization of resources by engaging vendors and service providers earlier in the overall transition process.¹⁴

Quincy states that construction of WQOW is already scheduled to be completed prior to September 7 and provides supporting details with regards to its planned construction schedule.¹⁵ Quincy has included with its waiver request letters from its transmitter manufacturer and its transmission line vendor/installer that they will be able to support WQOW's early transition without impacting their ability to support other stations' transition efforts.¹⁶ According to Quincy, WQOW does not need a new antenna for its post-auction operations.¹⁷ Quincy also provides an engineering analysis demonstrating that its early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹⁸

While the DMA as a whole currently has three rescan periods, Quincy contends that due to the "split nature" of the La Crosse-Eau Claire DMA, the total number of rescan periods will remain at three.¹⁹ In particular, Quincy contends that based on the coverage areas of the repacked, the DMA is split into two sub-regions: (1) Eau Claire and (2) La Crosse. Viewers within each of these regions rely upon different repacked stations for the same content. According to Quincy repacked stations in the DMA are divided in the sub-regions as follows:²⁰

- Over-the-air viewers in the La Crosse region will be required to rescan for:
 1. WXOW (ABC, completed transition)
 2. WHLA-TV (PBS, currently Phase 2, requested transition by 9/7/2018)
 3. WLAX and WEAU (Fox and NBC, both Phase 9)
- Over-the-air viewers in the Eau Claire region will be required to rescan for:
 1. WQOW (ABC, currently Phase 2, requested transition by 9/7/2018)
 2. WEUX (Fox, Phase 2)
 3. WEAU (NBC, Phase 9)²¹

¹³ WQOW Waiver Request at 3.

¹⁴ *Id.* at 2-3

¹⁵ *Id.*

¹⁶ *Id.*, Vendor Letters from Gates Air and Precision Communications Inc.

¹⁷ *Id.* at 3, fn. 7.

¹⁸ *Id.* at 2 and Technical Statement at 2-3.

¹⁹ *Id.* at 3. See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (While this is more than the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.)

²⁰ WQOW Waiver Request at 4-5 and fns. 10-11 (incorporating by reference DMA analysis conducted by WECB, LMS File No. 00000551116).

²¹ In the Eau Claire sub-region, viewers receive PBS content from WHWC-TV, Menomonie, WI, which is also owned by WECB and was not repacked.

In order to ensure viewers are well-informed about WQOW's change in transition schedule, Quincy states that it will conduct expanded consumer education and outreach efforts beyond what is required by the Commission's rules through efforts similar to those conducted by WQOW's sister station, WXOW, during its early transition. Quincy provides that these efforts included, but were not limited to, increased numbers of PSAs and crawls, information in local newscasts, outreach via digital and social media, and a telephone help line.²²

Discussion. Upon review of the facts and circumstances presented, we find Quincy's request to modify its phase assignment to permit WQOW to transition to its post-auction channel on or before September 7, 2018, satisfies the requirements for a waiver and is in the public interest. We agree that the change to WQOW's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period so long as WQOW coordinates the timing of its transition with WHLA-TV.²³ Quincy has provided evidence that the resources necessary to support its early transition are available and its early transition will not delay other transitioning stations' access to resources. The number of required rescan periods for the viewers in the DMA, including each sub-region, will remain three and Quincy has committed to put in place viewer outreach programs beyond those required by the Commission rules in order to ensure that viewers will be well-informed and can manage the additional rescan period. As a result, we find on balance that the benefit of reducing service loss to WHLA-TV, the ability to vendors to support WQOW's early transition, commitment to coordinate with WHLA-TV, and additional consumer education and outreach efforts, outweighs the viewer burden of an additional rescan period in this case.

Accordingly, we **GRANT** Quincy's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WQOW **from Phase 2** and permit the Station to commence testing and transition to its post-auction channel **on or before September 7, 2018**, subject to completion of applicable consumer education requirements and any required notice to MVPDs,²⁴ compliance with the Schedule 387 reporting requirements,²⁵ coordination of transition timing with WHLA-TV, and the additional consumer education commitments made in the waiver request. The

²² WQOW Waiver Request at 5-6.

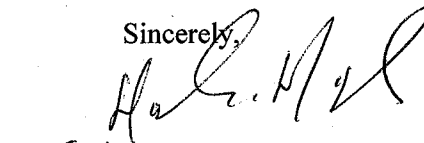
²³ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

²⁴ See 47 CFR § 73.3700(c), (d).

²⁵ See *supra* note 3; 47 CFR § 73.3700(e)(5).

Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²⁶ Furthermore, WQOW must cease operation on its pre-auction channel **no later than 11:59 pm local time on September 7, 2018.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail)
Stephen Hartzell, Esq. (Counsel for WQOW)
Margaret Miller, Esq. (Counsel for WHLA-TV)

²⁶ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64 ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline."). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv); see *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 871-72, paras. 40-45. Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.